IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.613 OF 2006
IN
APPEAL FROM ORDER NO.48 OF 2006

Kamruddin N. Shaikh. ..Applicant.

V/s.

M/s.Kalpavruksha Developers & Ors. ..Respondents.

WITH

CIVIL APPLICATION NO.54 OF 2006
IN
APPEAL FROM ORDER NO.48 OF 2006

M/s.Kalpavruksh Developers. ..Applicant.

V/s.

Kamruddin N. Shakh & Ors. ..Respondents.

WITH

APPEAL FROM ORDER NO.492 OF 2006

Spurti Co-op. Hsg.Socy. Ltd. ..Appellants.

V/s.

Kamruddin N. Shakh & Ors. ..Respondents.

Mr.Shriniwas Deshmukh for applicant in CA 613/06.

Mr.Rajiv Narula for respondent No.1 in CA 613/06.

Mr.S.M.Khaire for respondent No.2 in CA 613/06.

Mr.R.S.Mishra for respondent Nos.3 to 5 in CA 613/06.

Mr.D.V.Deokar, 1st Asst. Court Receiver.

Mr.C.R.Bhogaonkar, 2nd Asst. Court Receiver.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 17, 2006.

P.C. :

1. Heard.

2. This application deserves to be dismissed as I have already heard the parties on the issue whether the Court Receiver should take over possession of the suit property. In my opinion, the arrangement which is directed under order dated July 7, 2006 would preserve the property from any encroachment, besides no person will be able to deal with the property till the appeal is disposed of. The appeal has already been fixed for final disposal on 26th September, 2006. In other words, this application is ill-advised. In fact, this application is filed by the parties who had made incorrect statement before me on July 7, 2006 that they have separate plot, which has already been fenced within the main suit plot. To ascertain that position Court Receiver was asked to visit the site forthwith and report about the correctness of the stand taken by the applicant. The Court Receiver has inspected the site in terms of order dated 7th July, 2006 and has noticed that suit plot is one unit and there are no plots within the main plot as was contended before this Court on

behalf of the applicant. Hence, this application is dismissed with costs.

3. At this stage, counsel for the applicant submits that the Court receiver’s report is incorrect and misleading. This aspect will be considered at the time of final hearing of the appeals and appropriate direction will be passed, as may be warranted in the fact situation of the case. Court receiver may proceed to comply with the direction contained in order dated 7th July, 2006 regarding fencing of the suit plot forthwith.